

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
WAYNE EVANS,

Plaintiff,

- against -

MORRIS HUDSON, BERNARD WALTON,  
PHILIP SMITH and CRYSTAL SMITH,

Defendants.  
-----X

Civil Action No.:  
17-CV-59

**NOTICE OF REMOVAL**


TO: SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

**PLEASE TAKE NOTICE** that defendants MORRIS HUDSON and BERNARD WALTON hereby remove the civil action entitled *Wayne Evans v. Morris Hudson, Bernard Walton, Philip Smith and Crystal Smith*, Index Number 302959/2016, from the Supreme Court of the State of New York, County of Bronx, where it is now pending to the United States District Court of the Eastern District of New York pursuant to 28 U.S.C. §§ 1332 and 1441.

Dated: New York, New York  
January 5, 2017

GALLO VITUCCI KLAR LLP

BY: \_\_\_\_\_

  
SHERRI A. JAYSON, ESQ. (0443)  
*Attorneys for Defendants*  
*Morris Hudson and Bernard Walton*  
90 Broad Street, 12<sup>th</sup> Floor  
New York, New York 10004  
(212) 683-7100  
File No.: OOI-2016-9

TO: Law Office of Kenneth M. Mollins, P.C.  
*Attorneys for Plaintiff*  
1393 Veterans Memorial Highway, Suite 101S  
Hauppauge, New York 11788  
(631) 608-4100  
File No.: 20150805

Law Office of Dennis C. Bartling  
*Attorneys for Defendants*  
*Philip Smith and Crystal Smith*  
875 Merrick Avenue  
Westbury, New York 11590  
(516) 229-4472

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
WAYNE EVANS,

Plaintiff,

- against -

CIVIL ACTION NO.:  
17-CV-59

**PETITION FOR REMOVAL**

MORRIS HUDSON, BERNARD WALTON,  
PHILIP SMITH and CRYSTAL SMITH,

Defendants.  
-----X

TO: JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

The Petition of Sherri A. Jayson respectfully shows as follows:

1. That the undersigned are counsel for the defendants MORRIS HUDSON and BERNARD WALTON and hereby remove the civil action entitled *Wayne Evans v. Morris Hudson, Bernard Walton, Philip Smith and Crystal Smith*, Index Number 302959/2016, which is currently pending in the Supreme Court of the State of New York, County of Bronx to the United States District Court of the Eastern District of New York pursuant to 28 U.S.C. §§ 1332 and 1441.

2. This action was commenced by the filing of a Summons and Complaint dated August 30, 2016. A Summons and Complaint was filed on August 30, 2016. Thereafter, Plaintiff filed an Amended Summons and Complaint on or about October 27, 2016. Upon information and belief, issue was thereafter joined by the service of an Answer on behalf of Defendants Philip Smith and Crystal Smith. Petitioners are not in possession of the Smiths' Answer.

3. An Answer on behalf of Defendants Morris Hudson and Bernard Walton was served on December 2, 2016. Copies of the Summons and Complaint and Answer of Defendants Hudson and Walton are collectively attached hereto as Exhibit "A".

4. That the causes of action as set forth in the Complaint seek money damages for personal injuries.

5. In their Complaint, Plaintiffs seek to recover damages for personal injury resulting from an alleged accident that took place on August 8, 2015 on East New York Avenue and Mother Gaston Boulevard in the County of Kings, City and State of New York.

6. Plaintiff Wayne Evans is natural person who is a resident and citizen of the State of Connecticut.

7. Defendants Philip Smith and Crystal Smith are natural persons who are residents and citizens of the State of Virginia.

8. Defendant Morris Hudson is a natural person residing in and a citizen of the State of South Carolina.

9. Defendant Bernard Walton is a natural person residing in and a citizen of the State of North Carolina.

10. Plaintiff's Summons and Complaint did not contain a statement of damages, pursuant to N.Y. C.P.L.R. § 3017. Accordingly, the thirty day deadline did not begin upon the filing of the Complaint. See 28 U.S.C. §1446(b)(3).

11. On December 2, 2016, Defendants Merchants and Ibrahim along with their answer, served Plaintiffs with multiple discovery demands including a demand for a statement of damages pursuant to N.Y. C.P.L.R. § 3017. See Exhibit "B".

12. Plaintiff has not yet served a response to that demand. However, in response to a good faith letter I sent seeking a response to our demand, Plaintiff's counsel advised by email dated December 30, 2016, that Plaintiff claims \$500,000.00 in damages as alleged in response to the Demand for Bill of Particulars by Defendants Smith. A copy of Plaintiff's email dated

December 30, 2016 and Bill of Particulars responsive to Defendants Smith dated December 6, 2016 are collectively annexed hereto as Exhibit "C".

13. This case was commenced in Supreme Court, Bronx County. However, as the accident occurred in Kings County, the Smith defendants filed a motion to change venue to Kings County. In response thereto, all parties executed a stipulation consenting to change venue to Supreme Court, Kings County. A copy of the stipulation consenting to change venue is annexed hereto as Exhibit "D".

14. That this action may be removed to this Court by the defendants pursuant to 28 U.S.C. § 1441(c) since Plaintiff's action is a civil action where the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs and is between citizens of different states.

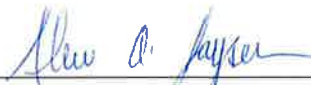
15. As the residence amongst the defendants and the plaintiff establish complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000 exclusive of costs and interest, Defendants Hudson and Walton respectfully remove this action from the Supreme Court of the State of New York County of Bronx, to the United States District Court for the Eastern District of New York.

WHEREFORE, Defendants respectfully request that the action now pending against them in the Supreme Court of the State of New York, County of Bronx be removed therefrom to this Court.

Dated: New York, New York  
January 5, 2017

GALLO VITUCCI KLAR LLP

BY:

  
\_\_\_\_\_  
SHERRI A. JAYSON, ESQ. (0443)  
*Attorneys for Defendants*  
*Morris Hudson and Bernard Walton*  
90 Broad Street, 12<sup>th</sup> Floor  
New York, New York 10004  
(212) 683-7100  
File No.: OOI-2016-9

TO: Law Office of Kenneth M. Mollins, P.C.  
*Attorneys for Plaintiff*  
1393 Veterans Memorial Highway, Suite 101S  
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875 Merrick Avenue  
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(516) 229-4472

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
WAYNE EVANS,

Plaintiff,

VERIFICATION

- against -

MORRIS HUDSON, BERNARD WALTON,  
PHILIP SMITH and CRYSTAL SMITH,

Defendants.

-----X

Sherri A. Jayson, being duly sworn according to law, deposes and says:

That I am counsel for Defendants, MORRIS HUDSON and BERNARD WALTON, the  
within named Defendants/Petitioners; that she has read the foregoing Petition for Removal; and  
that the statements contained therein are true in substance and to my knowledge.

  
\_\_\_\_\_  
SHERRI A. JAYSON, ESQ. (0443)

Sworn to before me this  
5<sup>th</sup> day of January, 2017

  
\_\_\_\_\_  
Notary Public

Yvette Pagan  
Commissioner of Deeds, City of New York  
No. 1-6962  
Cert. Filed in New York County  
Comm Expires July 1, 2017

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Civil Action No.:

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WAYNE EVANS,

Plaintiff,

- against -

MORRIS HUDSON, BERNARD WALTON,  
PHILIP SMITH and CRYSTAL SMITH,

Defendants.

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**NOTICE OF REMOVAL AND PETITION FOR REMOVAL**

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GALLO VITUCCI KLAR LLP  
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File No.: OOI-2016-9